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Change Log:

Version	Date	Editor/Reviewer	Change Description
1.0	05/09/2012	Noleen Warrick	Initial version for policy framework. Sets forth the administrative hearing procedures for the Utah OIG.

I. Definitions

- (A) "Action" means a reduction, denial or revocation of reimbursement for services for a provider or any other action by the Office that affects the legal rights of a person or group of persons.
- (B) "Aggrieved Person" means any recipient or provider who is adversely affected by any action or inaction of the Office.
- (C) "Ex Parte Communication" means direct or indirect communication in connection with an issue of fact or law between the presiding officer and one party only.
- (D) "Medical Record" is a record that contains medical data of a client.
- (E) "Office" means the Utah Office of Inspector General for Medicaid Services.
- (F) "Order" means a ruling by a presiding officer that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.
- (G) "Person" means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.
- (H) "Petitioner" means the person who initiates an adjudicative proceeding.
- (I) "Presiding officer" means an individual, including but not limited to an Administrative Law Judge (ALJ), designated by the Inspector General to conduct an adjudicative proceeding.
- (J) "Respondent" means a person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.

II. Computation of Time

Unless otherwise provided in a specific section of these rules, time shall be computed in accordance with the Utah Rules of Civil Procedure.

III. Request for Hearing

- (A) An aggrieved person may file a written request for agency action in accordance with U.C.A. § 63G-4-201 and this section. If a medical issue is in dispute, each request shall include supporting medical documentation. Any other disputed issue shall include appropriate supporting documentation. The Office will schedule a hearing only when it receives sufficient documentation and may dismiss a request for agency action if it does not receive supporting documentation in a

timely manner.

(B) Hearings must be requested within 30 calendar days from the date the Office sends written notice of its intended action.

(C) The request for hearing must explain why the party is seeking agency relief, and the party must submit the request on the "Request for Hearing/Agency Action" form. The party must then mail or fax the form to the address or fax number contained on the notice of agency action. Failure to submit a timely request for a hearing constitutes a waiver of the aggrieved person's due process rights.

(D) The Office considers a hearing request sent via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, the Office considers the request to be filed on the date that the Office receives it, unless the sender can demonstrate through competent evidence that it was mailed before the date of receipt.

IV. Designation of Proceedings as Formal or Informal

(A) Subject to the provisions of Subsection (b), all agency adjudicative proceedings shall be informal as defined in U.C.A. § 63G-4-203.

(B) At any time before issuing a decision, the presiding officer may convert an informal proceeding to a formal proceeding or a formal proceeding to an informal proceeding if conversion is in the public interest and does not unfairly prejudice the rights of any party.

V. Service

(A) A person that files a document with the Office shall also serve the document upon all other named parties to the proceeding and file a proof of service with the Office that consists of a certificate, affidavit or acknowledgment of service.

(B) If the Office must provide notice of a hearing, the notice becomes effective on the date notification is sent.

(C) Any recoupment or take back against future funds in an amount less than \$50,000 shall be communicated to the provider via email including a verification certificate attached to verify delivery.

(D) Any recoupment or take back against future funds in the amount of \$50,000 or more shall be communicated to the provider through certified mail or similar guaranteed delivery mechanism.

(E) In addition to the methods set forth in this rule, a party may be served as permitted by the Utah Rules of Civil Procedure.

VI. Availability of Hearing

- (A) All requests for Hearings/Agency Action shall be set for an initial hearing in accordance with subsection (3).
- (B) The presiding officer may elect to hold one or more prehearings to:
- (i) formulate or simplify the issues;
 - (ii) obtain admissions of fact and documents that will avoid unnecessary proof;
 - (iii) arrange for the exchange of proposed exhibits or prepared expert testimony;
 - (iv) outline procedures for the evidentiary hearing; or
 - (v) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.
- (C) The Office will conduct an evidentiary hearing in connection with the agency action if the respondent requests a hearing and there is a disputed issue of fact or policy. If there is no disputed issue of fact or policy, the presiding officer may deny a request for an evidentiary hearing and issue a recommended decision without a hearing. There is no disputed issue of fact or policy if the aggrieved person submits facts or policies that do not conflict with the facts or policies the Office relies upon in taking action or seeking relief.
- (D) The Office may deny or dismiss a request for a hearing if the aggrieved person:
- (i) withdraws the request in writing;
 - (ii) verbally withdraws the hearing request at a prehearing conference;
 - (iii) fails to appear or participate in a scheduled proceeding without good cause;
 - (iv) prolongs the hearing process without good cause;
 - (v) cannot be located or agency mail is returned without a forwarding address; or
 - (vi) does not respond at any time to correspondence from the presiding officer, fails to provide the documentation required in subsection 3, or fails to provide any records the Office requests.
- (E) If the aggrieved person objects to the hearing denial, the person may raise that objection as grounds for relief in a request for reconsideration.

VII. Presiding Officer

(A) The Inspector General shall appoint an impartial presiding officer or other individual to conduct any hearing provided under these rules. Previous involvement in the initial determination of the action precludes a presiding officer or other individual from appointment.

(B) The presiding officer shall maintain order and may recess the hearing to regain order if a person engages in disrespectful, disorderly or disruptive conduct. The presiding officer may remove any person, including a participant, from the hearing to maintain order. If a person shows persistent disregard for order and procedure, the presiding officer may:

- (i) restrict the person's participation in the hearing;
- (ii) strike pleadings or evidence; or
- (iii) issue an order of default.

VIII. Modifying Requirements of Rules

(A) Except as provided in this paragraph, the requirements of these rules may be modified by order of the presiding officer for good cause.

(B) The requirements for timely filing a Request for Hearing under section (3) may not be modified.

IX. Ex Parte Communications

(A) Ex parte communications are prohibited.

(B) The presiding officer may not listen to or accept any ex parte communication. If a party attempts ex parte communication, the presiding officer shall inform the offeror that any communication that the presiding officer receives off the record will become part of the record and furnished to all parties.

(C) Ex parte communications do not apply to communications on the status of the hearing and uncontested procedural matters.

X. The Informal Hearing

(A) Unless otherwise provided in this section, informal hearings will be conducted in accordance with the Utah Administrative Procedure Act, Utah Code 63G-4-203, 209, 302, 401, 402, 405, 501, 502, 503, and 601.

- (B) The Office shall notify all parties of the date, time and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure by a party to appear at the hearing after notice has been given may be grounds for default and may waive both the right to contest the allegations and the right to the hearing.
- (C) Petitioners and respondents, and their designees, shall be permitted to testify, present evidence, and comment on the issues. Formal rules of evidence shall not apply.
- (D) Testimony may be taken under oath at the presiding officer's discretion.
- (E) All hearings are open to all parties.
- (F) Discovery is prohibited; informal disclosures will be ruled on at the pre-hearing conference.
- (G) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the presiding officer when requested by a party, or may be issued by the presiding officer on his/her own motion.
- (H) A petitioner shall have access to relevant information contained in the Office's files and to material gathered in the investigation of petitioner to the extent permitted by law.
- (I) The presiding officer may cause an official record of the hearing to be made, at the Office's expense.

XI. The Formal Hearing

- (A) Unless otherwise provided in this section, formal hearings will be conducted in accordance with the Utah Administrative Procedure Act, Utah Code 63G-4-204 through 209, 302, 401, 403, 405, 501 and 502.
- (B) The Office shall notify the parties of the date, time, and place of the hearing at least ten days in advance of the hearing. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure to appear at the hearing after notice has been given may be grounds for default and may waive both the petitioner's right to contest the allegations, and the petitioner's right to the hearing.
- (C) The presiding officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence.
- (D) Discovery
 - (i) the Utah Rules of Civil Procedure do not apply to formal adjudicative proceedings

and formal discovery is permitted only as set forth in this section;

(ii) the scope of discovery in formal adjudicative proceedings, unless otherwise limited by order of the presiding officer, is as follows:

(a) The Office may request copies of pertinent records. In the event the provider fails to produce the records within a reasonable time the Office may review all pertinent records in the custody of the provider during regular working hours after three days of written notice.

(b) The Office shall allow the aggrieved person or the person's representative to examine all Office documents and records upon written request to the Office no later than 21 days before the hearing.

(c) A party may request access to protected health information in accordance with Rule 380-250, which implements the privacy rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(d) The presiding officer may permit the filing of formal discovery or taking of depositions only upon a clear showing of necessity that takes into account the nature and scope of the dispute. If the presiding officer allows formal discovery, he/she shall set appropriate time frames for response and assess sanctions for non-compliance.

(e) The presiding officer may order a medical assessment at the expense of the Office to obtain information. This information is subject to HIPAA confidentiality requirements and is part of the hearing record.

(f) The presiding officer may set appropriate deadlines and page limits for any motions.

(g) The presiding officer may require the filing of stipulations of facts, or pre-trial briefs, or pretrial disclosures.

(h) The presiding officer may permit the parties to make oral arguments or submit additional briefs or memoranda after the close of the evidence.

(i) The presiding officer may require each party to submit a post-hearing brief, and proposed findings of fact and conclusions of law.

(j) Presiding officer's orders shall comply with 63G-4-208.

XII. Proposed Decision and Final Agency Review

(A) At the conclusion of the hearing, the presiding officer shall take the matter under advisement

and submit a recommended decision to the designee of the Director of the Department of Health. The recommended decision is based on the testimony and evidence entered at the hearing, Medicaid policy and procedure, and legal precedent.

- (B) The recommended decision must contain findings of fact and conclusions of law.
- (C) The designee of the Director of the Department of Health may:
 - (i) adopt the recommended decision or any portion of the decision;
 - (ii) reject the recommended decision or any portion of the decision, and make an independent determination based upon the record; or
 - (iii) remand the matter to the presiding officer to take additional evidence, and the presiding officer thereafter shall submit to the director's designee a new recommended decision.
- (D) The designee's decision constitutes final administrative action and is subject to judicial review.
- (E) The presiding officer shall send a copy of the final administrative action to each party or representative and notify them of their right to judicial review.
- (F) The parties shall comply with a final decision from the director reversing the agency's decision within ten calendar days.

XIII. Declaratory Orders

- (A) Any person may file a request for Office action, requesting that the Office issue a declaratory order that determines the applicability of a statute, rule, or order within the primary jurisdiction of the Office in accordance with 63G-4-503.
- (B) The petition form shall:
 - (i) Be clearly designated as a request for a declaratory order;
 - (ii) identify the statute, rule, or order to be reviewed;
 - (iii) describe the situation or circumstances giving rise to the need for the declaratory order or in which applicability of the statute, rule, or order is to be reviewed;
 - (iv) identify the person directly affected by the statute, rule, or order;
 - (v) include an address and telephone where the petitioner can be reached during regular work days; and,

(vi) be signed by the petitioner.

(C) The Office will not issue a declaratory order that deals with a question or request that the presiding officer determines is:

- (i) not within the jurisdiction and competence of the Office;
- (ii) trivial, irrelevant, or immaterial;
- (iii) not ripe or appropriate for determination;
- (iv) currently pending or will be determined in an on-going judicial proceeding;
- (v) prohibited by state or federal law; or
- (vi) a challenge of the validity of a federal statute or regulation.

(D) The presiding officer shall designate the procedures that shall govern the hearing in accordance with U.C.A. § 63G-4-503(5).